

Joint Submission for the 3rd cycle of the Universal Periodic Review for the Syrian Arab Republic



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Introduction

1. This report is submitted by the Cairo Institute for Human Rights Studies (CIHRS), the Association of Detainees and Missing Persons in Sednaya Prison (ADMSP), Caesar Families Association, Coalition of Families of Persons Kidnapped by ISIS (Massar), Families for Freedom, and the Ta'afi Initiative to address concerns arising from the Syrian government's policies and practices pertaining to detainees and the disappeared since Syria's last review in 2016. This submission highlights how the combined impact of these policies and practices contributes to the persistent denial of human rights and fundamental freedoms for Syrians.

Arbitrary Detention and Enforced Disappearance

2. Over the past decade, all warring parties in Syria have failed to respect the rights of detained persons in line with international legal obligations and have committed war crimes and crimes against humanity in the context of detention.¹ The ongoing practices of arbitrary detention and enforced disappearance continue to be among the most urgent challenges to human rights in Syria. Tens of thousands remain arbitrarily detained or forcibly disappeared, primarily by the Syrian government but also by other actors inside Syria.

¹ Independent International Commission of Inquiry on the Syrian Arab Republic, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 11 March 2021, p. 2, available at: <https://undocs.org/A/HRC/46/55>.

² Association of Detainees and the Missing in Sednaya Prison, *Forcibly Disappeared in Syrian Detention Centers: Research about the Details of the Process of Forced Disappearance and the Fate of the Victims*, December 2020, p. 37.

3. Over 94 percent of enforced disappearance cases occur in areas under the control of the Syrian government, and the remaining six percent are distributed among areas controlled by other warring parties, including non-state actors.² The release of detainees and the disclosure of the fate and location of the forcibly disappeared are urgent priorities for the Syrian people and Syrian civil society, and are indispensable to realizing justice, accountability, and redress for victims and their families.
4. Prior to 2011, enforced disappearance and arbitrary detention was a mainstay of the Syrian government's campaign to silence political opponents, intimidate families and friends, and deter further political opposition and protest. During the rule of former president Hafez al-Assad, enforced disappearance was commonly used to intimidate and control Syrian society, with an estimated 17,000 persons forcibly disappeared dating back to the 1980s.³ Following widespread protests in 2011 and the subsequent war, the government's use of this crime against humanity has significantly widened. It is estimated that at least 150,000 people⁴ in Syria remain forcibly disappeared or have been arbitrarily detained, primarily by the Syrian government under president Bashar al-Assad but also by other warring parties inside Syria. Many were targeted for participating in peaceful protests or expressing dissenting political opinions.
5. Other parties to the conflict perpetrate similar "detention-related practices" as documented by the Independent International Commission of Inquiry on the Syrian Arab Republic (COI) "Enforced disappearance and incommunicado detention, torture, inhuman or degrading treatment, sexual violence and death in detention were documented in detention facilities operated by all parties across the country."⁵
6. In addition to extrajudicial killing and summary executions, many detainees in Syria have been denied the right to health and as a result have died in detention amid horrific, overcrowded, and unsanitary conditions lacking sufficient food, ventilation, or rest: an environment ripe for the transmission of infection and illness. Some common causes of death are gastrointestinal infection, skin disease, mental distress causing detainees to refuse food and drink, and chronic diseases for which detainees receive inadequate to no medical treatment.⁶

² Association of Detainees and the Missing in Sednaya Prison, *Forcibly Disappeared in Syrian Detention Centers: Research about the Details of the Process of Forced Disappearance and the Fate of the Victims*, December 2020, p. 37.

³ *Ibid.* p. 12.

⁴ Syrian Network for Human Rights, "Record of Arbitrary Arrests," 14 June 2021, available at: <https://sn4hr.org/blog/2021/06/14/record-of-arbitrary-arrests1/>.

⁵ Independent International Commission of Inquiry on the Syrian Arab Republic, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 11 March 2021, p. 21, available at: <https://undocs.org/A/HRC/46/55>.

⁶ Human Rights Watch, *If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities*, 16 December 2015, available at: <https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities#268a87>.

7. Given the squalid conditions in detention facilities across Syria, detainees are acutely vulnerable to the spread of the COVID-19 virus. At the onset of the pandemic, the Office of the High Commissioner for Human Rights and UN Special Procedures called on governments to release political prisoners and those arbitrarily detained as well as vulnerable groups including children, the elderly, and those with medical conditions.⁷ Throughout the COVID-19 pandemic, only 60 detainees were released by the Syrian government from detention centers in southern Syria and Damascus.⁸
8. As root causes of the 2011 uprising, securing the release of detainees, disclosing the fate of the disappeared, and ensuring truth and justice for victims and their families is fundamental to any political settlement and prospects for sustainable peace in Syria.

Impact of Detention on Survivors and Families

9. Since its last review in 2016, little progress has been made on the detainees and disappeared file. Disregarding its UPR recommendations, the Syrian government has instead maintained its systematic and widespread practice of arbitrarily detaining or forcibly disappearing any individual perceived to be at odds with its authoritarian rule, inflicting immeasurable harm on victims, their families, and Syrian society at large. Former detainees suffer from long-standing and severe psychological distress as well as injuries and physical pain resulting from torture and other ill-treatment and cruelty.⁹
10. Moreover, upon release many survivors who remain in Syria have faced difficulties in securing housing and employment as well as in accessing education for their children.¹⁰ Former detainees also live in constant fear of being detained again and often confine themselves to their homes. They are unable to carry out basic civic activities that require clearance from security services.¹¹
11. The whereabouts and fates of tens of thousands of Syrians remain unknown as their families continue to seek answers while struggling with the psychological and emotional toll of their loved one's arbitrary absence as well as with the legal limbo that results from lacking a death certificate, jeopardizing these family members' rights to housing, land, and property. Female-headed households are especially vulnerable, as women's names are often excluded from documents pertaining to housing, land, and property, and as a result they face "further challenges to secure or prove inheritance rights or marital status."¹²

⁷ OHCHR, "Urgent action needed to prevent COVID-19 "rampaging through places of detention" – Bachelet," 25 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745>.

⁸ Human Rights Watch, "Dozens of Prisoners Released in Syria," 6 November 2020, available at: <https://www.hrw.org/news/2020/11/06/dozens-prisoners-released-syria>.

⁹ Independent International Commission of Inquiry on the Syrian Arab Republic, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 11 March 2021, p. 21, available at: <https://undocs.org/A/HRC/46/55>

¹⁰ Ibid. p. 21.

¹¹ Ibid. p. 21

¹² Independent International Commission of Inquiry on the Syrian Arab Republic, *Death Notifications in the Syrian Arab Republic*, 27 November 2018, p.3-4, available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/DeathNotificationsSyrianArabRepublic_Nov2018.docx.

12. In May 2018, the Syrian government provided civil registry offices with notifications regarding thousands of individuals who are deceased, which were then registered and used to update family records. According to a report by the COI, these death notices are believed to reflect deaths of individuals detained by State authorities between 2011 and 2014 which occurred in detention facilities run by Syrian intelligence or military agencies.¹³ In examining the notifications, the COI found that “in nearly every instance, the records indicated natural causes of death such as ‘heart attack’ or ‘stroke’,” and that “[s]ome individuals from the same geographic area share common death dates, possibly indicating group executions.”¹⁴
13. As noted by the COI, by releasing these death notifications, the State is clearly acknowledging that it possesses “information about the fates, including purported dates of death of those deceased,” and “knowing where the individual was at the time of his/her death, as well as to having played a role in deaths in the cases of executions by court order or extrajudicial executions.”¹⁵ The Syrian government has neither released any information on the locations of those deceased’s remains nor has it returned any personal belongings to the families.¹⁶
14. As reiterated by the COI, “government forces meticulously kept registers of detainees, as international standards prescribe, but failed to inform families of the fate of detainees, as also required by international law. Tens of thousands of families have anxiously awaited news for nearly a decade.”¹⁷ The availability of registries shows that the Syrian government is able to provide information about the fate of the detained and disappeared to their families. The intentional withholding of information on the fate of the forcibly disappeared, predominantly by the government but also by other parties, is in effect “prolonging the suffering of hundreds of thousands of families of those forcibly disappeared,” which has a devastating impact on families.¹⁸
15. In parts of Syria that were under the control of the Islamic State (ISIS), the fates of thousands of individuals who were kidnapped or detained remain unknown despite ISIS’ loss of territorial control in northern Syria in 2019. In the aftermath, families have been unable to locate their loved ones as a result of the absence of any centralized authority or point person to contact regarding missing persons in areas under the control of the Syrian government or the Kurdish-led Autonomous Administration of North and East Syria.¹⁹

¹³ Ibid. p. 3.

¹⁴ See also Reuters, “Flurry of Syrian death notices shows fate of government detainees,” 31 July 2018, available at: <https://www.reuters.com/article/us-mideast-crisis-syria-detainees-idUSKBN1KL2PA>.

¹⁵ Ibid. p. 4.

¹⁶ Ibid. p. 4.

¹⁷ Independent International Commission of Inquiry on the Syrian Arab Republic, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 11 March 2021, available at: <https://undocs.org/A/HRC/46/55>

¹⁸ Ibid.

¹⁹ Human Rights Watch, *Kidnapped by ISIS: Failure to Uncover the Fate of Syria’s Missing*, February 2020, p. 49, available at: https://massarfamilies.com/wp-content/uploads/2021/01/syria0220_web_0.pdf.

16. A number of mass graves have been found in areas previously under ISIS control that local authorities estimate hold thousands of bodies of ISIS victims as well as ISIS fighters and civilians killed by airstrikes.²⁰ Critical evidence is at risk of being lost as local authorities and organizations lack the necessary forensic and criminal training and expertise to properly recover bodies and evidence from the mass grave sites, jeopardizing families' rights to truth and justice for the missing.²¹

Growing Support for International Mechanism for the Detained and Disappeared

17. On the national level, there are no viable channels for Syrians to make missing persons reports or seek information about the missing and disappeared as any attempt puts family members at risk of detention or other abuses. Moreover, families desperate for information about their detained and disappeared loved ones are vulnerable to exploitation and financial extortion by officials, "fixers," or intermediaries who charge expensive fees for information or to help in securing visits or an individual's release; in many cases, they do not deliver the information or assistance promised.²²
18. In its March 2021 report, the Independent International Commission of Inquiry on the Syrian Arab Republic called on UN member states to "[f]acilitate the creation of an independent mechanism with an international mandate to coordinate and consolidate claims regarding missing persons, including persons subjected to enforced disappearance; task the mechanism with defining the elements required to efficiently and effectively track and identify those missing and disappeared; help consolidate claims filed with a wide variety of non-governmental and humanitarian organizations; and coordinate overtures of parties to the conflict to locate missing persons or their remains, including those found in mass graves, which meanwhile must be protected."²³ Subsequently, this call has been echoed by the UN High Commissioner for Human Rights,²⁴ the High Representative of the European Union for Foreign Affairs and Security Policy,²⁵ and by the European Parliament in a resolution passed in March 2021.²⁶

²⁰ Ibid. p. 52.

²¹ Ibid. p. 52.

²² See Association of Detainees and the Missing in Sednaya Prison, *Forcibly Disappeared in Syrian Detention Centers: Research about the Details of the Process of Forced Disappearance and the Fate of the Victims*, December 2020, p. 40 and France 24, "Syria 'fixers' cash in on despair of prisoners' families," 23 June 2021, available at: <https://www.france24.com/en/live-news/20210623-syria-fixers-cash-in-on-despair-of-prisoners-families>.

²³ *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, UN HRC, 46th Session, 11 March 2021, p. 26, A/HRC/46/55.

²⁴ UN OHCHR, "Syria: Truth and justice needed more than ever after 10 years of conflict – Bachelet," 11 March 2021, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26867&LangID=E>.

²⁵ European Union External Action Service, "Syria: Speech by High Representative/Vice-President Josep Borrell at the EP debate on 10 years of the conflict," 10 March 2021, available at: https://eeas.europa.eu/headquarters/headquarters-homepage_de/94591/Syria.

²⁶ European Union, European Parliament, European Parliament resolution of 11 March 2021 on the Syrian conflict – 10 years after the uprising, P9_TA(2021)0088, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0088_EN.pdf.

19. In February 2021, ADMSP, Caesar Families Association, Massar, Families for Freedom, and the Ta’afi Initiative (Truth and Justice Charter Coalition) issued the *Truth and Justice Charter* to present their comprehensive vision and demands regarding arbitrary detention, enforced disappearance, and torture.²⁷ The Truth and Justice Charter called for the establishment of an independent truth-seeking mechanism to reveal the circumstances and facts surrounding the violations.
20. In their report, *Humans not Numbers: The Case for an International Mechanism to Address the Detainees and Disappeared Crisis in Syria*,²⁸ the organizations reiterated that “accountability must eventually take its course, but the victims’ immediate priority is finding out the fate of their loved ones” while again underscoring that the mechanism must adopt a victim-centered approach ensuring strong collaboration with Syrian victim associations and broader civil society.”²⁹ In a joint statement to the HRC 46, our organizations called on UN member states to “consider establishing an international, independent mechanism to investigate information about detainees and the disappeared, with a view to disclosing the fate and whereabouts of those who have been forcefully disappeared or arbitrarily detained and ensuring accountability and redress for victims and their families in cases where violations of international human rights and humanitarian law have been committed.”³⁰
21. Subsequently, this call has been reiterated by the UN High Commissioner for Human Rights, the UN Secretary-General, and the High Representative of the European Union for Foreign Affairs and Security Policy, as well as UN member states. A resolution focusing on the issue of the missing and forcibly disappeared in Syria was adopted on 13 July 2021 during the 47th Human Rights Council session. It recognizes the “vital work of Syrian organizations of victims, survivors and families working on the issue of missing persons” and calls on “Member States, relevant United Nations bodies, international organizations and civil society to coordinate further efforts and proactively focus attention on the issue of missing persons in the Syrian Arab Republic, including those subjected to enforced disappearance [...]”. And on March 11, 2021, the European Parliament passed a resolution urging the European Union (EU) and its member states to facilitate the creation of an independent mechanism with an international mandate and a victim-led approach to locate the missing or their remains. The draft resolution on Syria acknowledges the importance of including victims’ perspectives and demands for truth and justice in the international community’s efforts on the Syrian Arab Republic.

²⁷ Ta’afi Initiative, “Truth and Justice Charter: A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria by Syrian Victims’ and Family Members’ Organizations,” February 2021, available at: <https://taafi-sy.org/wp-content/uploads/2021/02/Truth-Justice-Charter-EN.pdf>.

²⁸ Sarkin, Jeremy, “Humans not Numbers: The Case for an International Mechanism to Address the Detainees and Disappeared Crisis in Syria,” May 2021, p. 17-20, available at: <https://taafi-sy.org/wp-content/uploads/2021/05/Humans-Not-Numbers-EN-FINAL-20MAY2021.pdf>.

²⁹ Ibid. p. 8.

³⁰ CIHRS, “Organizations urge the HRC to seek truth and justice for detained and disappeared Syrians,” February 2021, available at: <https://cihrs.org/most-significant-appeals-of-cihrs-to-the-hrc-before-its-46th-session-redress-for-victims-and-their-families-and-accountability-for-perpetrators-in-syria-and-yemen/?lang=en>

Legal Analysis

Throughout the conflict in Syria, no warring party has respected the rights of detained persons in line with international law. The Syrian government and other parties to the conflict, including Turkey³¹ and its allies in occupied areas of northern Syria as well as non-state actors such as ISIS, Hay'at Tahrir al-Sham, the Free Syrian Army, the Syrian National Army, and the Syrian Democratic Forces, have all arbitrarily detained individuals and committed war crimes and crimes against humanity in this context.

22. The Syrian government's use of detention and enforced disappearance violates several provisions enshrined in the International Covenant on Civil and Political Rights, including the right to life (Article 6), the right not to be subjected to torture and the right to be treated with humanity and respect (articles 7 and 10), the right to liberty and security (Article 9), the right to recognition before the law (Article 16) in addition to the right to family life (Article 17). The Syrian government's actions also violate the Convention against Torture and UN Declaration on the Protection of all Persons from Enforced Disappearance in their entirety, in addition to specific provisions affecting the rights of family members of individuals arbitrarily detained and forcibly disappeared within the Convention on the Rights of the Child and of the Convention on the Elimination of All Forms of Discrimination against Women.³² As noted by the COI, the government's widespread and systematic use of detention, enforced disappearance, and related practices against the civilian population amount to crimes against humanity, including: murder, extermination, imprisonment, sexual violence and torture, and other inhuman act, as well as the war crimes of murder, torture and ill-treatment, rape and sexual violence, outrages upon personal dignity, and the passing of sentences and carrying out summary executions.³³

Recommendations

³¹ See Human Rights Watch, "Illegal Transfers of Syrians to Turkey," 3 February 2021, available at: <https://www.hrw.org/news/2021/02/03/illegal-transfers-syrians-turkey>.

³² Independent International Commission of Inquiry on the Syrian Arab Republic, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 11 March 2021, p. 22, available at: <https://undocs.org/A/HRC/46/55>

³³ Ibid. p.22-23. / In relation to the CEDAW, see specifically Articles 2(b)(c)(f), 5(a)(b), 15(1) and 16(1)(d). In relation to the CRC, see specifically Articles 2(2), 6, 7(1), 9(4), 16

23. The analysis contained in this submission demonstrates Syria's failure to implement any of the recommendations since the 2016 UPR pertaining to the issue of the detained and disappeared, as well as Syria's persistent non-compliance with its obligations under international human rights and humanitarian law. Syria has failed to end its practice of arbitrary detention and enforced disappearance and its use of torture and other ill-treatment as well as sexual and gender-based violence.
24. In the previous Universal Periodic Review (UPR) of 2016, 20 recommendations were made to Syria by UN member states on the issue of enforced disappearance and arbitrary detention. Syria supported 9 recommendations on the issue, however to date none of these recommendations were implemented.

2016 Recommendations Supported but Not Implemented

25. While Syria has supported the recommendation by Uruguay "to ratify the International Convention for the Protection of all Persons from Enforced Disappearance," to date, it has not ratified the convention.
26. While Syria has supported the recommendation by Brazil to "allow for the visit of humanitarian agents to all places of detention," it continues to obstruct the access of the ICRC to detention facilities.
27. While Syria has supported the recommendation by Spain to "stop arbitrary detention and release all those unfairly or indiscriminately arrested" and the recommendation by Luxembourg to "put an end to enforced disappearance in all places of deprivation of liberty, as well as extrajudicial executions," Syria continues to detain and forcibly disappear more than 150,000 Syrians, 11,000³⁴ of whom were confirmed to be deceased through the smuggled photographs known as the "Caesar Photos."

Recommendations Our Organizations Urge States to Raise

- Provide the registries containing the names and locations of all detainees in detention facilities under the Syrian government's control to UN agencies and specialized international organizations, such as the International Committee of the Red Cross.
- Disclose all prisons and detention facilities, both public and secret, and end the use of secret detention facilities entirely.
- Provide access to the ICRC to all detention facilities.
- Return the remains of deceased individuals in detention to enable their families to pay their respects and provide a dignified burial in line with their traditions.
- Cooperate with the international community to establish an independent international humanitarian mechanism to locate the forcibly disappeared and detained individuals by all parties to the conflict.
- Immediately release all arbitrarily detained individuals.
- Halt the systematic practice of arbitrary detention and enforced disappearance and the use of torture, inhuman treatment, and sexual and gender-based violence.

³⁴ Human Rights Watch, *If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities*, 16 December 2015, available at: <https://www.hrw.org/report/2015/12/16/if-dead-could-speak/mass-deaths-and-torture-syrias-detention-facilities#268a87>.

- End the practice of prosecuting civilians in military courts and abolish any and all field and exceptional courts.
- Criminalize, both in law and practice, the use torture and all forms of cruel, degrading, or inhuman treatment or punishment,
- Incorporate specific legal provisions into Syrian domestic legislation establishing a procedure to obtain a declaration of absence due to enforced disappearance, in order to adequately address the legal situation of disappeared persons and that of relatives in areas related to financial matters, family law, property rights, and social welfare.
- Take urgent steps to protect mass graves with forensic expertise in order to preserve evidence, to allow for the identification of bodies, and to prosecute all suspects in line with international fair trial standards.